

S 1510 SQUADRON Same as [A 1986](#) Rosenthal
ON FILE: 01/12/11 Penal Law
TITLE....Establishes the crime of aggravated domestic violence
01/10/11REFERRED TO CODES

A1986 Rosenthal Same as [S 1510](#)
SQUADRON
Penal Law
TITLE....Establishes the crime of aggravated domestic violence
01/12/11referred to codes

SQUADRON

Add S240.75, Pen L; add S200.63, CP L

Establishes the crime of aggravated domestic violence when a person has committed a specified domestic violence offense and has been convicted of one or more specified domestic violence offenses within the past five years.

CRIMINAL SANCTION IMPACT.

STATE OF NEW YORK

1510

2011-2012 Regular Sessions

IN SENATE

January 10, 2011

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated domestic violence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The penal law is amended by adding a new section 240.75 to
2 read as follows:
3 **§ 240.75 Aggravated domestic violence.**
4 **1. A person is guilty of aggravated domestic violence when he or she**
5 **commits a specified domestic violence offense and he or she has been**
6 **convicted of one or more specified domestic violence offenses within the**
7 **immediately preceding five years. For the purposes of this section, in**
8 **calculating the five year period, any period of time during which the**

9 defendant was incarcerated for any reason between the time of the
10 commission of any of the previous offenses and the time of commission of
11 the present crime shall be excluded and such five year period shall be
12 extended by a period or periods equal to the time served under such
13 incarceration.

14 2. A "specified domestic violence offense" is an offense where the
15 defendant and the person against whom the offense is committed are or
16 were at a previous time members of the same family or household as
17 defined in subdivision one of section 530.11 of the criminal procedure
18 law and where that offense includes any of the following provisions of
19 this chapter: section 120.00 (assault in the third degree); section
20 120.05 (assault in the second degree); section 120.10 (assault in the
21 first degree); section 120.13 (menacing in the first degree); section
22 120.14 (menacing in the second degree); section 120.15 (menacing in the
23 third degree); section 120.20 (reckless endangerment in the second
24 degree); section 120.25 (reckless endangerment in the first degree);
25 section 120.45 (stalking in the fourth degree); section 120.50 (stalking

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 in the third degree); section 120.55 (stalking in the second degree);
2 section 120.60 (stalking in the first degree); section 121.11 (criminal
3 obstruction of breathing or blood circulation); section 121.12 (strangu-
4 lation in the second degree); section 121.13 (strangulation in the first
5 degree); subdivision one of section 125.15 (manslaughter in the second
6 degree); subdivision one, two or four of section 125.20 (manslaughter in
7 the first degree); section 125.25 (murder in the second degree); section
8 130.20 (sexual misconduct); section 130.30 (rape in the second degree);
9 section 130.35 (rape in the first degree); section 130.40 (criminal
10 sexual act in the third degree); section 130.45 (criminal sexual act in
11 the second degree); section 130.50 (criminal sexual act in the first
12 degree); section 130.52 (forcible touching); section 130.53 (persistent
13 sexual abuse); section 130.55 (sexual abuse in the third degree);
14 section 130.60 (sexual abuse in the second degree); section 130.65
15 (sexual abuse in the first degree); section 130.66 (aggravated sexual
16 abuse in the third degree); section 130.67 (aggravated sexual abuse in
17 the second degree); section 130.70 (aggravated sexual abuse in the first
18 degree); section 130.91 (sexually motivated felony); section 130.95
19 (predatory sexual assault); section 130.96 (predatory sexual assault
20 against a child); section 135.05 (unlawful imprisonment in the second
21 degree); section 135.10 (unlawful imprisonment in the first degree);
22 section 135.60 (coercion in the second degree); section 135.65 (coercion
23 in the first degree); section 140.10 (criminal trespass in the third

24 degree); section 140.15 (criminal trespass in the second degree);
25 section 140.17 (criminal trespass in the first degree); section 140.20
26 (burglary in the third degree); section 140.25 (burglary in the second
27 degree); section 140.30 (burglary in the first degree); section 145.00
28 (criminal mischief in the fourth degree); section 145.05 (criminal
29 mischief in the third degree); section 145.10 (criminal mischief in the
30 second degree); section 145.12 (criminal mischief in the first degree);
31 section 145.14 (criminal tampering in the third degree); section 215.50
32 (criminal contempt in the second degree); section 215.51 (criminal
33 contempt in the first degree); section 215.52 (aggravated criminal
34 contempt); section 240.25 (harassment in the first degree); subdivision
35 one, two or four of section 240.30 (aggravated harassment in the second
36 degree); or any attempt or conspiracy to commit any of the foregoing
37 offenses.

38 3. The person against whom the specified domestic violence offense is
39 committed may be different from the person against whom the previously
40 committed specified domestic violence offense was committed and, does
41 not need to be a member of the same family or household.

42 Aggravated domestic violence is a class E felony.

43 § 2. The criminal procedure law is amended by adding a new section
44 200.63 to read as follows:

45 § 200.63 Indictment; special information for aggravated domestic
46 violence offender.

47 1. Whenever a person is charged with the commission or attempted
48 commission of aggravated domestic violence as defined in section 240.75
49 of the penal law, an indictment or information for such offense shall be
50 accompanied by a special information, filed by the district attorney
51 with the court, alleging that the defendant was previously convicted of
52 aggravated domestic violence as defined in section 240.75 of the penal
53 law, or of a specified domestic violence offense as defined in subdivi-
54 sion two of section 240.75 of the penal law, that at the time of the
55 previous offense or at an earlier time the defendant and the person
56 against whom the offense was committed were members of the same family

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1 or household as defined in subdivision one of section 530.11 of this
2 chapter, and that such previous conviction took place within the time
3 period specified in subdivision one of section 240.75 of the penal law.
4 Except as provided herein, the people may not refer to such special
5 information during trial nor adduce any evidence concerning the allega-
6 tions therein.

7 2. At any time before the close of the people's case, the court, in
8 the absence of the jury, must arraign the defendant upon such informa-
9 tion and advise him or her that he or she may admit each such allega-
10 tion, deny any such allegation or remain mute with respect to any such
11 allegation. Depending upon the defendant's response, the trial of the

12 indictment or information must then proceed as follows:

13 (a)(i) If the previous conviction is for aggravated domestic violence
14 as defined in section 240.75 of the penal law, and the defendant admits
15 the previous conviction or that it took place within the time period
16 specified in subdivision one of section 240.75 of the penal law, the
17 admitted allegation or allegations shall be deemed established for all
18 subsequent purposes, including sentencing pursuant to section 70.00 of
19 the penal law. The court must submit the case to the jury as if the
20 admitted allegation or allegations were not elements of the offense. The
21 court may not submit to the jury any lesser included offense which is
22 distinguished from the offense charged solely by the fact that the
23 previous conviction is not an element thereof.

24 (ii) If the defendant denies the previous conviction or remains mute
25 with respect to it, the people may prove that element of the offense
26 before the jury as a part of their case.

27 (iii) If the defendant denies that the previous conviction took place
28 within the time period specified in subdivision one of section 240.75 of
29 the penal law, or remains mute with respect to that matter, the people
30 may prove, beyond a reasonable doubt, before the jury as part of their
31 case, that the previous conviction took place within the time period
32 specified.

33 (b)(i) If the previous conviction is for a specified domestic violence
34 offense as defined in subdivision two of section 240.75 of the penal
35 law, and the defendant admits the previous conviction, that it took
36 place within the time period specified in subdivision one of section
37 240.75 of the penal law, or that the defendant and the person against
38 whom the offense was committed were members of the same family or house-
39 hold as defined in subdivision one of section 530.11 of this chapter,
40 the admitted allegation or allegations shall be deemed established for
41 all subsequent purposes, including sentencing pursuant to section 70.00
42 of the penal law. The court must submit the case to the jury as if the
43 admitted allegation or allegations were not elements of the offense. The
44 court may not submit to the jury any lesser included offense which is
45 distinguished from the offense charged solely by the fact that the
46 previous conviction is not an element thereof.

47 (ii) If the defendant denies the previous conviction or remains mute
48 with respect to it, the people may prove that element of the offense
49 before the jury as a part of their case.

50 (iii) If the defendant denies that the previous conviction took place
51 within the time period specified in subdivision one of section 240.75 of
52 the penal law, or remains mute with respect to that matter, the people
53 may prove, beyond a reasonable doubt, before the jury as part of their
54 case, that the previous conviction took place within the time period
55 specified.

1 (iv) If the defendant denies that the defendant and the person against
2 whom the offense was committed were members of the same family or house-
3 hold as defined in subdivision one of section 530.11 of this chapter, or
4 remains mute with respect to that matter, the people may prove that
5 element of the offense before the jury as a part of their case.

6 3. Notwithstanding subdivision one and subparagraph (i) of paragraph
7 (a) and subparagraph (i) of paragraph (b) of subdivision two of this
8 section if evidence regarding the prior conviction, or that the defend-
9 ant and the person against whom the offense was committed were members
10 of the same family or household, as defined in subdivision one of
11 section 530.11 of this chapter, is relevant to help prove the crime or
12 crimes charged in the indictment or information, such evidence shall be
13 admissible.

14 4. A determination pursuant to this section that the defendant has a
15 previous conviction, that at the time of the prior offense the defendant
16 and the person against whom the offense was committed were members of
17 the same family or household, as defined in subdivision one of section
18 530.11 of this chapter, or that the previous conviction took place with-
19 in the time period specified in subdivision one of section 240.75 of the
20 penal law, shall be binding in any future proceeding in which the issue
21 may arise unless the conviction for the aggravated domestic violence
22 offense charged in the indictment or information is vacated or reversed.

23 § 3. This act shall take effect on the ninetieth day after it shall
24 have become a law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S1510

SPONSOR: SQUADRON

TITLE OF BILL:

An act to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated domestic violence

PURPOSE:

To create a felony-level charge for cases in which an offender is repeatedly convicted of a domestic violence offense.

SUMMARY OF PROVISIONS:

Section 1 establishes the crime of aggravated domestic violence as a Class E felony and outlines the incidents that in the aggregate constitute the new offense.

Section 2 provides that a special information may be included with an indictment of aggravated domestic violence. This section sets forth the procedure for trying the case and states that determinations made regarding certain allegations are binding in any future proceeding unless the conviction or determination is reversed or vacated.

Section 3 establishes an effective date of 180 days after passage.

JUSTIFICATION:

From 2004 to 2009, in New York County alone, there were 622 individuals convicted of two or more domestic violence offenses. Of those 622 defendants, 221 - or .36% had at least one case with a felony-level assault charge.

The following cases from the New York County District Attorney's Office illustrate the types of cases that prosecutors see every day:

- * After a long misdemeanor domestic violence history, involving multiple assaults, violations of orders of protection, a defendant chased his girlfriend down the street with a machete, biting and clawing at her in front of her three year old child.
- * Shortly after pleading guilty to assaulting his spouse in front of their children, a defendant went back to victim's apartment and hit her in the face. Only \$500 cash bail was set when defendant was arrested again.
- * A defendant has 132 prior convictions, many of which stemmed from assaults against his partner. The defendant recently served 9 months in jail for an assault against his daughter. Since his release on that case, the defendant has been arrested again for domestic assault.
- * One repeat domestic violence offender assaults his girlfriend each time he is released from custody. Most recently, he was indicted for biting the victim's face.
- * After badly beating his pregnant ex-girlfriend, a defendant was arrested. He continued to call his ex-girlfriend, threatening her from jail. He was re-arrested, and pleaded guilty to both cases.

* A defendant with two prior convictions for assaulting his girlfriend was recently rearrested and currently charged with a felony.

LEGISLATIVE HISTORY:

S.8038 (Squadron) - Codes; A.11365 (Rosenthal) - Codes

FISCAL IMPLICATIONS:

None.

LOCAL FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

180 days after becoming law.
